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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Najib A. Hodge,

10 Plaintiff,

11 v.

12 Home Depot, et *al.*,

13 Defendants.
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No. CV-24-02171-PHX-JJT

ORDER

15 At issue is Plaintiff's Application to Proceed in District Court Without Prepaying
16 Fees or Costs (Doc. 6). Having determined that Plaintiff is unable to pay the Court's fees,
17 the Court will grant Plaintiff's Application. However, upon screening Plaintiff's Amended
18 Complaint (Doc. 5, "Am. Compl."), the Court finds that the Amended Complaint fails to
19 state a claim.

20 **I. LEGAL STANDARD**

21 For cases proceeding *in forma pauperis*, Congress provided that a district court "shall
22 dismiss the case at any time if the court determines" that the "allegation of poverty is untrue"
23 or that the "action or appeal" is "frivolous or malicious," "fails to state a claim on which
24 relief may be granted," or "seeks monetary relief against a defendant who is immune from
25 such relief." 28 U.S.C. § 1915(e)(2). Section 1915(e) applies to all *in forma pauperis*
26 proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). "It is also clear that
27 section 1915(e) not only permits but requires a district court to dismiss an *in forma pauperis*
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1 complaint that fails to state a claim.” *Id.* at 1127. The Court must therefore dismiss an *in*
 2 *forma pauperis* complaint if it fails to state a claim or if it is frivolous or malicious.

3 Under Rule 8(a)(2), a complaint must contain “a short and plain statement of the
 4 claim showing that the pleader is entitled to relief.” The Rule further instructs that “[e]ach
 5 allegation must be simple, concise, and direct.” Fed. R. Civ. 8(d)(1). The complaint must
 6 contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
 7 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
 8 550 U.S. 544, 570 (2007)).

9 **II. ANALYSIS**

10 In the Amended Complaint, Plaintiff alleges that he visited a Home Depot store in
 11 Phoenix and was denied service due to his race. (Am. Compl. at 2–4.) He further alleges that
 12 he filed a complaint with Home Depot’s “corporate team,” which responded unhelpfully.
 13 (Am. Compl. at 4.) Plaintiff brings a single claim of racial discrimination under Title II of
 14 the Civil Rights Act of 1964. (Am. Compl. at 1–6.)

15 Title II provides that “[a]ll persons shall be entitled to the full and equal enjoyment
 16 of the goods, services, facilities, privileges, advantages, and accommodations of any place
 17 of public accommodation, as defined in this section, without discrimination or segregation
 18 on the ground of race, color, religion, or national origin.” 42 U.S.C. § 2000a(a). The statute
 19 defines “place of public accommodation” as lodgings, restaurants, gas stations, and
 20 entertainment facilities. 42 U.S.C. § 2000a(b); *Ford v. Surprise Fam. Urgent Care Ctr., LLC*,
 21 No. CV 10-1920-PHX-SRB, 2011 WL 13137866, at *2 (D. Ariz. Sept. 6, 2011). Courts
 22 construe this list narrowly and have consistently declined to expand the scope of the statute
 23 beyond the facilities specifically enumerated. *Dragonas v. Macerich*, No. CV-20-01648-
 24 PHX-MTL, 2021 WL 3912853, at *7 (D. Ariz. Sept. 1, 2021).

25 Plaintiff has not alleged that the store at issue is a lodging, restaurant, gas station, or
 26 entertainment facility, or any facility exhaustively enumerated in Title II; nor could he, as
 27 Home Depot is a hardware store. The Court must therefore dismiss Plaintiff’s claim because
 28 Title II is not applicable. If a defective complaint can be cured, the plaintiff is entitled to

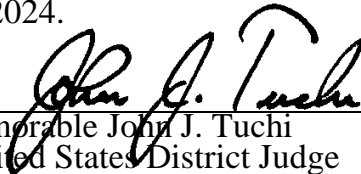
1 amend the complaint before the action is dismissed. *See Lopez*, 203 F.3d at 1127–30. But in
2 this case, it does not appear that Plaintiff can cure the defect in his Title II claim.

3 **IT IS THEREFORE ORDERED** granting Plaintiff’s Application to Proceed in
4 District Court Without Prepaying Fees or Costs (Doc. 6).

5 **IT IS FURTHER ORDERED** dismissing Plaintiff’s Amended Complaint (Doc. 5)
6 for failure to state a claim.

7 **IT IS FURTHER ORDERED** directing the Clerk of Court to close this case.

8 Dated this 3rd day of September, 2024.

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11 Honorable John J. Tuchi
12 United States District Judge
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